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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. KENITH PARK, Defendant and Appellant.	B167498 (Los Angeles County Super. Ct. No. BA233638)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark V. Mooney, Judge. Affirmed.

Valerie G. Wass, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan D. Martynec, Lawrence M. Daniels and Susan Lee Frierson, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant Kenith Park of kidnapping Sook He Ko for ransom or extortion (Pen. Code, § 209, subd. (a))[1] and making terrorist threats to Steve Cho (§ 422). The jury found defendant had personally used a deadly weapon (a knife) during the commission of the kidnapping (§ 12022, subd. (b)(1)). As will be explained in more detail later, the court ultimately sentenced defendant to state prison for life with the possibility of parole plus 15 years.

On this appeal, defendant urges the evidence is insufficient to support the kidnapping for extortion or ransom conviction because the victim's testimony was inherently improbable. That argument lacks merit. He next claims reversible error occurred because the trial court failed to pursue several challenges he made to the court interpreters who translated the victim's testimony. We find that any error that occurred was non-prejudicial. Lastly, he urges his sentencing violates *Blakely v. Washington* (2004) 542 U.S. ___ [124 S.Ct. 2531].[2] We conclude that *Blakely's* holding does not apply to the consecutive sentence imposed in this case. We therefore affirm the judgment.

STATEMENT OF FACTS

In January 2002, Sook He Ko (Ko), the kidnapping victim, illegally came to the United States from Korea with He Sun Shin (Shin) through arrangements made by John Ju (Ju) and Sun Hwa Lee (Lee). Ko did not know any English. Upon their arrival, the two women met with Ju. He took Ko's passport and told each of them that they owed him $10,000 for having made the arrangements. Ju took Ko

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[1] All subsequent undesignated statutory references are to the Penal Code.

[2] We permitted the parties to file supplemental briefs on this issue.

and Shin to Lee's apartment. Lee told them they would have to work to repay the debt. Ju and Lee essentially forced the two women to become prostitutes. For the first month, Ko and Shin were forced to turn over all of their earnings to Ju and Lee. Thereafter, they were allowed to keep a portion of their earnings. During this time, they lived with Lee.

In April 2002, after having had worked as a prostitute for three months, Ko quit. She left Lee's residence and moved in with a friend. At that time, Ko "owed" Lee $7,000.

On July 4, 2002, Ko and several friends, including Steve Cho (the victim of the terrorist threat count), went to a nightclub. Both Ko and Cho used drugs that evening. At the club Ko saw Lee for the first time since April. Lee appeared angry. She told Ko to follow her to the parking lot. Ko did so. In the parking lot, Ko saw defendant whom she had seen before at Lee's apartment. Lee told Ko to get into a car. Ko refused. Defendant grabbed her wrist and said: "You bitch, get in the car." Ko screamed and security guards forced defendant to let go of her. Ko returned to the club.

Ko left the club several hours later with friends, including Cho. Defendant drove alongside Cho's car and told Ko that if she did not want to die, she should get out of the car. Defendant yelled at Cho that he (defendant) was a bounty hunter; that he wanted Ko; and that if Cho did not pull over, "he would blow [his] head off." Defendant drove in front of Cho and stopped his car. Defendant left his vehicle and, holding a knife, ran toward Cho's car and yelled at Ko to get out. Defendant also yelled at Cho to let her out. Frightened, Ko locked herself in.

Lee, Ju, and another man arrived at the scene. Lee told Ko that if she got out of the car, no one would get hurt. Ko complied and entered Ju's car. Ju drove Ko to Lee's apartment. Shortly thereafter, defendant arrived. He told Ko to go into Lee's bedroom. A half hour later, Lee arrived. She told Ko to repay the money or

to continue to work as a prostitute. Lee told her nothing would be gained by provoking defendant. Ko replied she would not work again as a prostitute but that she would repay the money in a month.

Lee permitted Ko to telephone two friends (Kim Myoung Soon and Euw Youn Hwa) she had been with earlier at the nightclub. Pursuant to Ko's request, the two women came to Lee's apartment. Defendant told Soon and Hwa that "they" would let Ko go if either guaranteed payment of the money. Defendant demanded the names, addresses and phone numbers in Korea of the two women's parents. Defendant stated that if payment was not forthcoming, he would "have to send somebody from [his] office" to their parents' home. When Soon stated she could not guarantee repayment of the amount Lee claimed was owed, defendant pulled out a knife and pointed it at Soon. Soon and Hwa thereafter left Lee's apartment.

Defendant threatened Ko throughout her presence in Lee's apartment. Defendant told her that she either had to obtain a loan or return to work as a prostitute. He told Ko that if she did not repay the money, he would send "one of his gangster members" to her mother's home in Korea. Defendant showed Ko a piece of paper that he said was a list of people he would have to kill. He then instructed her to write a note promising repayment. She did. The note, introduced into evidence at trial, recited that she had borrowed $12,000 from Lee; that she had relinquished her passport and freedom; and that if she did not repay the money, her family in Korea would repay it.

Later on, Ko entered the bathroom and phoned Soon. Soon contacted Cho who reported the matter to the police. The police went to Lee's apartment and freed Ko. Defendant and Lee were still there. Ko identified defendant as the man

who had kidnapped her and who had a knife. In a briefcase, the police found two knifes.[3]

Defendant presented no defense evidence.

DISCUSSION

A. SUFFICIENCY OF THE EVIDENCE

Defendant does not contest the sufficiency of the evidence to sustain his conviction for making terrorist threats to Cho. He challenges only the evidence offered to support his conviction for kidnapping Ko for ransom or extortion.

Defendant argues: "There are simply too many inconsistencies in [Ko's] testimony to regard her as a credible witness. Ko gave varying statements and testimony during her police interview, the preliminary hearing, and trial. Combined with the fact that she illegally entered this country, worked as a prostitute, used illegal drugs, and is an admitted liar who will make up a story whenever it is necessary to protect her own interests, her testimony should be disregarded."

The argument is not persuasive. At no point was Ko's identification of defendant impeached. Nor was her testimony about his threats or actions. Defendant's claim that "her testimony was largely uncorroborated regarding the facts crucial to establish the alleged kidnapping" is incorrect, both legally and factually. There is no requirement of corroboration in this instance. Nonetheless, Cho's testimony about defendant's words and actions after leaving the club corroborated Ko's testimony about defendant's threatening actions and statements that evening. The promissory note Ko was forced to sign corroborated her

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[3] The information also charged Lee with various crimes arising out of these events. Lee is not a party to this appeal.

testimony about what happened after being taken to Lee's apartment. And Shin's testimony corroborated that she and Ko had been forced into prostitution by Ju and Lee.

In any event, and more to the point, defendant's arguments about Ko's credibility were presented to the jury by his trial counsel during closing argument. In rebuttal, the prosecutor argued at length for Ko's credibility. By convicting defendant of kidnapping for ransom or extortion, the jury implicitly rejected the defense arguments and found Ko credible. As reviewing court, we "must accord due deference to the trier of fact and not substitute its evaluation of a witness's credibility for that of the fact-finder. [Citations.]" (*People v. Barnes* (1986) 42 Cal.3d 284, 303-304.) "'To warrant the rejection of the statements given by a witness who has been believed by the [trier of fact], there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions. [Citations.] Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.' [Citations.]" (*Id.* at p. 306.) Because Ko's testimony was not inherently improbable, the evidence is sufficient to sustain defendant's conviction for kidnapping for ransom or extortion.

B. CHALLENGE TO THE INTERPRETERS

Defendant's opening brief contends prejudicial error occurred because "the trial court failed to make a determination regarding the Korean interpreter's *competence* after the accuracy of some of the translations were challenged by defense counsel." (Italics added.) In his reply brief, defendant recasts this contention by claiming the trial court refused "to make an inquiry into the

accuracy of the Korean interpreter's translations after some of the translations were challenged by defense counsel." (Italics added.) Regardless of how cast, the contention lacks merit.

1. *Factual Background*

The kidnapping victim, Sook He Ko, testified at trial through court-appointed Korean interpreters. Three different interpreters were used at different times over a four-day period. They are Paul Son, Sumi Jones, and C. J. Park. Defendant's appellate contention is based upon three separate challenges made in the trial court to the interpreters.

a. *The First Challenge*

During the first day of Ko's testimony (April 8, 2003), Paul Son acted as the interpreter. Defendant was represented by Michael Adelson and William Minh. Adelson was lead counsel. Immediately before the first recess, Ko was asked: "Of the $200 from the first time that you did this [prostitution], how much of that did you get?" She answered: "I wasn't paid nothing for one month."

During the recess, and outside the presence of the jury, Minh, who is fluent in Korean, stated: "Your Honor, I like to have question asked again and I like to hear her response and the interpretation of that response, the very last question." A brief colloquy ensued during which the court stated that, in general, it would not entertain debate about Son's translations but that it would allow the one question to be asked and interpreted again. Minh then stated that he had misheard the answer and that he had no quarrel with Son's translation of that answer. (Defendant's briefs omit the fact that Minh disavowed any claim that Son had misinterpreted.) Minh also said: "*I am not challenging the interpreter [Paul Son], Your Honor, at all*. He's very experienced. I know him in court for almost 30 years, very good

interpreter. It's for our benefit I like to have that [last question] repeated. *It's not to challenge the interpreter.*"

In a similar vein, Adelson stated: "Let me make it clear, Your Honor. *I am not challenging the court appointed interpreter. . . .* [¶] *My issue is not that the interpreter is incompetent*. My issue is that if the interpreter doesn't understand exactly what was being said he should interpret literally rather than to guess and give an interpretation of the meaning and that is apparently what he did." (Italics added.) Adelson's claim of misinterpretation was based upon his imperfect recollection of the testimony. Adelson incorrectly stated Son had translated the answer as "Mr. Ju didn't pay me for a month" instead of "I wasn't paid for one month." As set forth above, the reporter's transcript reflects that the answer was translated as: "I wasn't paid nothing for one month."

The court noted Adelson's memory of Son's translation was in error but that it would "instruct the interpreter when at all possible to give a literal interpretation of the exact words unless the interpretation otherwise would be nonsensical." The exchange ended with both Adelson and Minh reiterating that they were not challenging Son's competency to interpret.

When proceedings resumed in front of the jury, the prosecutor again asked: "Just so we're clear, for the first month did you receive any of the $200 for each time you had a customer?" Ko answered: "No." The prosecutor then asked: "Who did the money go to?" Ko replied: "John Ju and . . . Sun Hwa [Lee]." Defense counsel raised no objections to Son's interpretation of this exchange.

b. *The Second Challenge*

The second challenge arose on the second day of Ko's testimony, April 9. The clerk's transcript indicates two interpreters assisted on that day: Sumi Jones

and C. J. Park. However, the reporter's transcript does not indicate which of the two acted as interpreter during the following exchange.

The prosecutor asked Ko: "How did he [defendant] threaten you [after you were taken back to Lee's apartment on July 4]?" Ko replied: "Either I get a daily loan or do the work. And call my house in Korea and if that doesn't work and he was going to send somebody, *one of his gangster members in Korea* to send it to my Mom." (Italics added.)

This colloquy followed at sidebar.

> "MR. ADELSON: Mr. Minh informs me that there was an incorrect, significant translation. That the witness said that he would call his people from the office in Korea where she used the word 'gangster.' And I think we have to have the interpreter come over here and explain whether that is so or not.
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> "THE COURT: Again I am going to rely on the interpretation by the court appointed interpreter. You can on cross-examination clarify what she meant, but as I said yesterday, we're not going to be interrogating and cross-examining the court appointed interpreter as to interpretation again questioning her ability to interpret the language. We can see about having another interpreter brought in.
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> "MR. ADELSON: This is a major error and I think we need to examine it at this point.
>
> "THE COURT: Again I am going to rely on the person who has taken the examination, who has been certified by the court to be qualified to interpret for the courts, so I'm relying on that."

The defense did not pursue this issue on its cross-examination of Ko.

c. *The Third Challenge*

The third challenge occurred during testimony given after the luncheon recess on April 9. Once again, either Sumi Jones or C. J. Park was acting as interpreter. Ko had testified about the promissory note she was forced to sign after being taken to Lee's apartment on July 4. Ko identified the document in court.[4] The prosecutor asked Ko to read the document to the jury. She did so. The defense challenge involves the following phrase in Ko's testimony about the document's contents: "And as collateral I [Sook He Ko] give my passport and . . . my freedom from the 6th of April to 7th of April 10:00 p.m."

At sidebar, the following exchange occurred.

> "MR. ADELSON: Your Honor, Mr. Minh has translated this note for me and the word that she said freedom does not say freedom. It says I freely entrust. That is a very important point.
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> "THE COURT: That might have been. I think the interpreter was having some difficulty with a word in terms of when she was reading.
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> "MR. GOUDY [the prosecutor]: I will clear it up. I will go over that with her.
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> "THE COURT: And I think, you know, have the witness read the word and have the interpreter translate what the witness has read."

In front of the jury, proceedings resumed as follows.

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[4] As noted earlier, the document was admitted into evidence without any defense objection.

"Q. (By Mr. Goudy [the prosecutor]:) Ms. Ko, if you could read this sentence right here, these lines right here. What do they say?

"THE COURT: And we would like the interpreter to interpreter [*sic*] what Ms. Ko says, not have you read this portion, but interpret what Ms. Ko says.

"THE WITNESS: What [defendant] said when she wrote these two lines?

"Q. (By Mr. Goudy:) What do these two lines say?

"A. Because I borrow the money, the condition is that I was not allowed to go out freely and I would leave my passport in their hands.

"MR. ADELSON: Your Honor, that is not a translation. Move to strike.

"THE COURT: Well I want Ms. Ko to read exactly what was said what was written there and just make sure. We don't want Ms. Ko to tell us what it was about, read exactly those lines, okay, ma'am? And then we will have a translation of exactly those lines.

"THE WITNESS: I borrow the money so as a collateral my passport and also freedom I would give those to them.

"Q. (By Mr. Goudy:) Was it freedom or freely?

"A. That is I would give them my passport and my freedom to them as a collateral.

"MR. ADELSON: May we approach?

"THE COURT: Counsel, I think it may be an area more for cross-examination to clear up.

"MR. ADELSON: All right."

On cross-examination, defense counsel pursued the issue by impeaching Ko with her preliminary hearing testimony in which she had read the contents of the note into evidence. On the disputed phrase, she had read: "And for collateral, I let them keep my passport. And I do this voluntarily. And from August [*sic*] 6 and 7, 10:00 p.m." Defense counsel pressed her to explain why at trial she had testified the note said she had given up her freedom but at the preliminary hearing she had testified simply that she had voluntarily given up her passport. Ko replied: "All I did was reading the same note. [¶] . . . [¶] I cannot remember all the details I testified before. What I remember is that amount and comment on my family in Korea and also if I don't pay off until certain date then my passport and my body would be in their hands."

2. *Legal Background*

Evidence Code section 752, subdivision (a) provides: "When a witness is incapable of understanding the English language or is incapable of expressing himself or herself in the English language so as to be understood directly by counsel, court, and jury, an interpreter whom he or she can understand and who can understand him or her shall be sworn to interpret for him or her."[5] An interpreter takes an oath to truly translate the witness's testimony. (Evid. Code, § 751, subd. (a).) An interpreter is subject to all rules relating to witnesses. (Evid. Code, § 750.)

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[5] Evidence Code section 730 et seq. governing appointment of expert witnesses is applicable to the appointment and compensation of an interpreter. (Cal. Law Revision Com. com., 29B Pt. 2 West's Ann. Evid. Code (1995 ed.) foll. § 752, p. 372.) Government Code section 68560 et seq. addresses certification and competency of interpreters.

The trial court determines the competency (e.g. foundational qualifications to translate) of an interpreter. (*People v. Roberts* (1984) 162 Cal.App.3d 350, 355.) Separate and independent from the issue of competency to interpret is the question of the accuracy of a particular translation. A defendant may challenge specific interpretations of a witness's testimony. (*People v. Johnson* (1975) 46 Cal.App.3d 701.) The challenge can be made either by examining the interpreter or by relevant independent evidence. (21 Cal.Jur.3d (2001) Criminal Law: Trial, § 402, pp. 676-677.) "Denial of proper interpreter services may impair a defendant's right to confront adverse witnesses. [Citation.]" (*People v. Roberts, supra,* 162 Cal.App.3d at p. 356, fn. 6; *People v. Johnson, supra,* 46 Cal.App.3d at p. 705.)

3. *Analysis of Defendant's Contention re Competency of Interpreters*

To a certain extent, defendant appears to argue that the trial court failed to make the requisite finding of competency about the interpreter(s) after defense counsel had challenged specific translations. That argument has not been preserved for appellate review. In regard to the challenge on April 8 to interpreter Paul Son, both defense counsel specifically disavowed any claim Son was not competent (e.g. qualified) to interpret. In regard to the two challenges made on April 9 to interpreters Sumi Jones and/or C. J. Park, at no point did defense counsel question the competency (e.g. qualifications) of either interpreter. Instead, the defense complaint was that one phrase in the victim's testimony had been incorrectly translated and that one phrase in the victim's testimony about the note had been incorrectly translated. Because the claim of lack of competency was not raised below, the issue cannot be raised for the first time on this appeal. (*People v. Aranda* (1986) 186 Cal.App.3d 230, 237.)

4. *Analysis of Defendant's Contention About Accuracy of Interpreters' Translations*

To a large extent, defendant contends the trial court erred because it failed to make an inquiry into the accuracy of the interpreter's translations following defense counsel's objections at three different points of Ko's testimony.

Defendant's argument essentially groups the three objections together to argue there was reversible trial court error. For instance, he argues: "It was vital to the fairness of [his] trial that Ko's testimony be accurately translated. Based on the court's failure to ensure that the interpreter was translating Ko's testimony in an correct manner, it is unknown how much of her testimony was accurately translated."[6] We will not take such a gestalt approach to this claim of error for several reasons. The approach fails to acknowledge that three different interpreters were involved in translating Ko's testimony. It also incorrectly assumes that three objections directed at discrete portions of Ko's testimony are sufficient to preserve a claim that the entire translation of her testimony was deficient. And it is grounded in unsupported speculation: if one interpreter's translation of one phrase was incorrect, the entirety of three interpreter's translations can be called into question.[7] We therefore decline to follow defendant's approach. Instead, we will

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[6] A footnote in defendant's brief notes that another prosecution witness (He Sun Shin) also testified with the assistance of Korean interpreter C. J. Park. If defendant is suggesting that there was some error in the translation of Shin's testimony, that claim is clearly barred because trial counsel made no objections during Shin's testimony to any translation done by C. J. Park.

[7] Defendant's brief opines that the "court's steadfast refusal to make an inquiry when the defense challenged a translation *may have* eventually caused defense counsel to cease from making further objections because they would have been futile." (Italics added; fn. omitted.) Nothing in the record supports this speculation.

separately analyze each challenge to determine if the trial court erred, and if it did, whether the particular error was prejudicial.

a. *The First Challenge*

The first challenge was made to Son's translation of one of the victim's answers. However, after an exchange with the court, defense attorney Minh, who was fluent in Korean, specifically abandoned his claim of error after he realized he had incorrectly heard the translation. Defense attorney Adelson, who did not understand Korean, persisted in claiming the translation was not sufficiently literal. But, as we explained earlier, that claim was based upon an imperfect recollection of the testimony, a point the trial court made. On this appeal, defendant does not argue that the court erred in so finding. Consequently, there is no specific adverse ruling for us to review in regard to the first challenge.

Defendant's suggestion that the court committed prejudicial error at that point because it indicated it would not entertain any impeachment of an interpreter's translation is not persuasive. To the extent that statement by the trial court was incorrect, it was error in a vacuum. Because it was not linked to any particular translation, it could not have prejudiced defendant. In other words, "no harm, no foul."

b. *The Second Challenge*

The second challenge was made to the translation of the victim's testimony in which she said defendant had threatened to send "one of his gangster members" to her mother's home in Korea. The defense claimed the correct translation was defendant had said he would call people from his office in Korea. The court summarily dismissed the objection, stating it would not entertain impeachment of

the interpreter's translation. As we now explain, that ruling was error but does not require reversal.

People v. Johnson, supra, 46 Cal.App.3d 701 is instructive. There, the victim testified through a Spanish interpreter at the preliminary hearing. Because the victim was unavailable at trial, the prosecutor sought to introduce the earlier testimony using the former testimony exception to the hearsay rule. The defense moved to exclude the testimony, urging that deficiencies in the translation at the preliminary hearing had denied it the reasonable opportunity to cross-examine the victim. To support that claim, the defense "offered evidence of the investigating officer involved in the matter who was totally fluent in Spanish and English and who was present throughout the preliminary hearing to the effect that there were significant errors in the translation." (*Id.* at p. 703.) The trial judge refused to hear this evidence. (*Id.* at pp. 703-704.)

The appellate court found the trial judge had erred. The defense had a right to present its evidence because an interpreter, like any witness, can be impeached. (Evid. Code, § 750.) The appellate court found the defense offer of proof sufficient because it "was from a credible source, the investigating police officer." (*People v. Johnson, supra*, 46 Cal.App.3d at p. 705.) The court found the error prejudicial because if the trial court had credited the impeachment of the interpreter, it would have excluded the only incriminating evidence: the victim's prior testimony from the preliminary hearing.

In light of *People v. Johnson, supra*, 46 Cal.App.3d 701, we conclude the trial court erred in summarily denying the defense effort's second challenge to the interpreter. The basis of the complaint of an inaccurate translation was a credible source, attorney Minh who was fluent in Korean. Defense counsel requested "to have the interpreter come over here and explain whether [Minh's claim of an inaccurate translation] is so or not." Because the accuracy of an interpreter's

translation can be impeached, the trial court should have pursued the matter. However, its error in failing to do so in this case was not prejudicial. Because its erroneous ruling implicated the constitutional right of a criminal defendant to confront and cross-examine an adverse witness, the ruling is reviewed under the harmless beyond a reasonable doubt standard set forth in *Chapman v. California* (1967) 386 U.S. 18, 23. (*People v. Torres* (1985) 164 Cal.App.3d 266, 269.) "The *Chapman* test is whether it appears 'beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.' [Citation.]" (*Yates v. Evatt* (1991) 500 U.S. 391, 402-403.) "To say that an error did not contribute to the verdict is . . . to find that error unimportant in relation to everything else the jury considered on the issue in question." (*Id.* at p. 403.)

In this case, the error did not contribute to the verdict: conviction of kidnapping Ko for ransom or extortion. The nature of the person whom defendant threatened to send to the home of Ko's mother -- gangster or merely someone from his office -- was collateral to the fact that the evidence established he threatened to send someone. Furthermore, as Ko had testified, the threat to her mother was just one of numerous threatening statements defendant had made over a several hour period. In addition, Ko had testified that defendant had told her friend Soon that if she guaranteed payment, he wanted the address and phone number of her parents' home in Korea so that he could send someone from his office in the event of nonpayment. Consequently, the jury heard more than one variation on the theme that an unidentified third person would seek retribution in Korea were payment not made. And in closing argument, the prosecutor made no mention of this brief testimony that defendant threatened to send gangsters to the home of Ko's mother. As explained earlier, the defense closing argument framed the issue for the jury as whether or not Ko was credible. Her brief testimony about gangsters was not mentioned by either party. We therefore conclude to the extent that defendant's

ability to cross-examine Ko on the type of person who would enforce his threat against her mother in Korea was impaired because the trial court declined to explore the issue of the accuracy of the interpreter's translation, that error was harmless beyond a reasonable doubt.

c. *The Third Challenge*

The third challenge involved translation of Ko's testimony about one phrase in the note that defendant had forced her to write. After defense counsel made his challenge, the court directed the prosecutor to again ask Ko to read that portion of the note. The court instructed the interpreter to translate Ko's testimony, not the note itself. The interpreter gave essentially the same translation as given earlier. Even were we to construe defense counsel's motion to strike and request to approach the bench as a request to be given an opportunity to impeach the interpreter on this specific translation, we conclude the court's failure to do so was harmless beyond a reasonable doubt.

The defense was able to cross-examine Ko about this issue. Counsel impeached her with her preliminary hearing testimony in which she had read the note differently and used this impeachment in closing argument to urge she was not credible. In addition, the defense had another option but it chose not to pursue it. Because the note was introduced into evidence, the defense could have called its own expert to translate it. Lastly, although the prosecutor mentioned the note several times in closing argument, he never mentioned the contested phrase. Any error was therefore harmless beyond a reasonable doubt.

C. SENTENCING

1. *Factual Background*

After the jury returned with its decision, a court trial was conducted on the prior convictions alleged in the information. The court found two prior convictions to be true within the meaning of section 667, subdivision (a)(1) and the "Three Strikes" law.

The defense filed a sentencing memorandum and motion to dismiss the prior convictions. The motion raised no objection to the imposition of consecutive sentences.[8] The court granted the defense motion to strike one of the two prior convictions for purposes of the "Three Strikes" law.

The court sentenced defendant as follows. On the kidnapping for ransom or extortion conviction, it imposed a life term with possibility of parole.[9] The court imposed an 11-year determinate sentence (one year for the deadly weapon enhancement and two five-year terms for the prior convictions) and a *consecutive* term of four years for the terrorist threat conviction (the two year midterm doubled to four years because this is a "two strikes" case).

In regard to the determinate sentence, the court explained: "Now because this is a determinate sentence that the court is imposing, that is going to be fully consecutive to the indeterminate sentence that the court is imposing as to count 1 [kidnapping Ko for ransom or extortion]. *The court is deciding to impose*

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[8] The probation department's pretrial report recommended a consecutive sentence on the enhancement in the event defendant was convicted.

[9] Because this is a "two strikes" case, defendant will not eligible for parole for 14 years instead of the usual 7 years.

consecutive time due to the fact that this was a separate victim involved in this case [terrorist threats to Cho]." (Italics added.)

2. *Legal Background*

Section 669 provides: "When any person is convicted of two or more crimes . . . , the second or other subsequent judgment upon which sentence is ordered to be executed shall direct whether the terms of imprisonment or any of them to which he . . . is sentenced shall run concurrently or consecutively."

Rule 4.425(a) of the California Rules of Court states that criteria affecting the trial court's decision to impose consecutive rather than concurrent sentences include:

> "(1) The crimes and their objectives were predominantly independent of each other.
>
> "(2) The crimes involved separate acts of violence or threats of violence.
>
> "(3) The crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior."

Apprendi v. New Jersey (2000) 530 U.S. 466, 490 (*Apprendi*) held: "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."

In *Blakely v. Washington, supra,* 124 S.Ct. 2531 (*Blakely*), the court explained that "the 'statutory maximum' for *Apprendi* purposes is the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant*. [Citations.] In other words, the relevant

'statutory maximum' is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose *without* any additional findings. When a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts 'which the law makes essential to the punishment,' [citation] [so that] the judge exceeds his proper authority." (*Id.* at p. 2537.) In other words, if the sentencing court imposes a term greater than the specified statutory maximum for the offense because of a fact neither admitted by the defendant during a plea nor found to exist by the jury, the defendant's constitutional right to a jury trial has been violated. *Blakely* apparently applies to all cases not yet final when it was decided in June 2004. (See *Schriro v. Summerlin* (2004) 124 S.Ct. 2519.)

3. *Discussion*

Defendant, relying upon *Blakely,* urges: "[I]n order to sentence consecutively rather than concurrently, the trial judge must find one or more of the factors listed in rule 4.425. None of these factors are presented to, or found true beyond a reasonable doubt by the jury. Consecutive sentencing is an enhanced sentencing power reserved solely for the trial judge based upon factors beyond those authorized by the jury verdict alone. As such, the consecutive sentencing scheme in California fails the *Apprendi* test as explained in *Blakely*, and thus violates the Sixth Amendment right to a jury trial." (Fn. omitted.) Defendant requests that his sentence be vacated and we remand the cause to the trial court with directions to replace the consecutive term with a concurrent term.

The Attorney General first contends this contention has been waived because in the trial court defendant "never questioned the truth of the fact that the case involved separate victims, the fact relied on by the trial court to impose a consecutive sentence" and he "did not object to the imposition of a consecutive

sentence on the ground now raised." This argument of waiver is meritless. (*People v. Ochoa* (September 2, 2004, D042215) __Cal.App.4th ___ [Because *Blakely* was decided after the defendant had been sentenced, the claim can be raised for the first time on appeal notwithstanding the lack of objection below]; see also *People v. Vera* (1997) 15 Cal.4th 269, 276-277 [constitutional claim may be raised for the first time on appeal] and *People v. Cleveland* (2001) 87 Cal.App.4th 263, 268, fn. 2 [*Apprendi* claim not waived because *Apprendi* was not decided until after the defendant had been sentenced].)

We therefore turn to the merits of the contention.[10] *People v. Sykes* (2004) 120 Cal.App.4th 1331 recently analyzed and rejected an identical contention. It reasoned: "Neither *Blakely* nor *Apprendi* purport to create a jury trial right to the determination as to whether to impose consecutive sentences. Both *Blakely* and *Apprendi* involve a conviction for a single count. The historical and jurisprudential basis for the *Blakely* and *Apprendi* holdings did not involve consecutive sentencing. [Citations.] . . . The consecutive sentencing decision does not involve the facts . . . 'necessary to constitute a statutory offense.' [Citation.] In fact, the consecutive sentencing decision can only be made once the accused has been found beyond a reasonable doubt to have committed two or more offenses -- this fully complies with the Sixth Amendment jury trial and Fourteenth Amendment due process clause rights. . . . [The] constitutional principle [as explained by *Apprendi* and *Blakely*] does not extend to whether the sentences for charges which have been found to be true beyond a reasonable doubt shall be served consecutively." (*People v. Sykes, supra,* at pp. 1344-1345; accord *People v. Ochoa, supra*.)

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[10] The California Supreme Court granted review in *People v. Black* (S126182, July 28, 2004) to decide what effect *Blakely* has on the trial court's authority to impose consecutive sentences.

We find *People v. Sykes, supra,* to be persuasive. Here, the trial court imposed consecutive sentences because the jury had convicted defendant of separate crimes involving separate victims. Neither the California Rules of Court nor the Penal Code requires the trial court to make factual findings to support a decision to impose consecutive sentences. Rule 4.425 of the California Rules of Court simply sets forth nonexclusive criteria for the imposition of consecutive terms. Nothing requires judicial fact finding to support that decision.

In any event, in this case the jury did find beyond a reasonable doubt the fact that the trial court cited when it imposed a consecutive sentence (the crimes involved separate victims) when it convicted defendant of making terrorist threats to Steve Cho and kidnapping Sook He Ko.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED

HASTINGS, J.

We concur:

EPSTEIN, Acting P.J. GRIMES, J.*

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.